

## **INSTRUCTIONS FOR FILING A CIVIL ACTION ON YOUR BEHALF**

These instructions are designed to help you understand basic court procedures in civil actions. COURT EMPLOYEES CANNOT GIVE YOU LEGAL ADVICE.

These instructions do not cover all circumstances, nor all types of cases. **It is your responsibility to comply with the Federal Rules of Civil Procedure, the Local Rules of this court and any statutes and rules which may apply to your particular case.** If you are filing a prisoner civil rights action under 42 U.S.C. §1983, a habeas corpus petition under 28 U.S.C. §2241 or §2254, or a motion to vacate or set aside sentence under 28 U.S.C. §2255, there are special forms and instructions available from the Clerk's Office.

### **Filing A Complaint**

The first step in filing a lawsuit is to prepare a complaint. The court has a general complaint form. You are not required to use this form, although you may find it helpful to look it over.

If you prepare your own complaint it must be legibly handwritten or typed on 8 ½ by 11 paper. The first page should begin with the case caption. The caption includes the name of the court, the names of all the parties, and a blank space for the case number. After you file your complaint, a case number will be filled in by a court employee.

The body of the complaint must explain the facts of your claim, the legal basis, why you believe this court has jurisdiction, and what relief you want. It is not necessary to cite specific cases. At the end, sign and date the complaint. Underneath your signature, type or print your full address and phone number. This information must appear on every pleading, motion, or other paper you file.

Along with your complaint you must submit a summons for each defendant to be served. Use the forms provided by the court. Fill in the caption, leaving space for the case number blank. In the space on the summons form for the name and address of plaintiff's attorney, fill in your own name and address. The number of days a defendant will have to answer the complaint will vary depending on the type of claim and the defendant. In most civil actions, if the defendant is not an agency, officer or employee of the United

States, the defendant will have 20 days in which to answer. If the defendant is an agency of the United

States or an officer or employee of the United States who is being sued for acts or omissions related to his or her employment, the defendant will have 60 days in which to answer. An exception is that if the defendant is an agency of the United States AND the complaint is brought under the Freedom of Information Act, the time for filing an answer is 30 days. REMEMBER, THE TIME FOR FILING AN ANSWER RUNS FROM THE DATE THE COMPLAINT AND SUMMONS ARE SERVED, NOT THE DATE THEY ARE ISSUED.

You also must submit a civil cover sheet. This is simply an information form which is used by the court when opening your case. This form is used only by the Clerk's Office for computer input and has no bearing on the merits of your case.

### **Filing Fees**

There is a filing fee of \$150 for most types of civil lawsuits. The fee must be paid at the time your complaint is filed. If you are paying by check or money order, it should be made payable to "Clerk, United States District Court." The court cannot accept credit cards. If you are unable to pay the filing fee, you may file an application for permission to proceed *in forma pauperis*. If the court grants this request it means that you will not have to pay the filing fee at the time the complaint is filed. Form applications for permission to proceed *in forma pauperis* are available from the court. When completing the form, it is very important that you answer all questions relating to your income, assets, and liabilities. If you fail to provide complete and accurate information your request may be denied or you may be required to provide additional information. If your request is denied you will be allowed a reasonable opportunity to pay the fee or provide additional information.

### **What the Court Does**

When a complaint is filed, the Clerk's Office "opens" a case. Opening a case involves assigning a number and a judge to the case, entering basic information on the court's computerized docket system, and making up a file folder.

### **Service**

Service of process must be done as required by court rules. Generally, service requires giving the defendant a copy of the complaint and a summons that you obtain from the Clerk's Office. If there is

more than one defendant, each defendant must be served.

If you file an application for permission to proceed *in forma pauperis*, the court will not issue you a summons for the defendant(s) until a judge approves your application.

If you are granted permission to proceed *in forma pauperis*, the United States Marshal will be directed to serve the summons and complaint. If the Marshal is to make service you will be required to complete a USM285 form and a summons instructing him where to serve the complaint. It is your responsibility to provide the court with an address where service can be made on the defendant.

If you pay the filing fee, the summons(es) will be issued and given to you. The Clerk's Office will stamp-file copies of the complaint you provide for you to then serve upon the defendant(s). It is your responsibility to see that each defendant is served with the summons and complaint. The Marshal does not serve summonses and complaints in cases where the filing fee has been paid.

The procedures for serving a defendant are in the Federal Rules of Civil Procedure, Rule 4. The two most common ways to serve a defendant are by personal delivery and by certified mail. Personal delivery involves giving the defendant copies of the summons, complaint, and any other required documents. Certified mail involves sending the defendant copies of the summons, complaint, and any other required documents by certified mail -- "Restricted Delivery" -- show to whom, date, and address of delivery.

Service may be made by anyone who is at least 18 years old **and not a plaintiff** in the case. There are many private process servers who, for a fee, will serve the defendant(s). Check with the Clerk's Office to see if a list of process servers is available.

The person who makes service must file with the court a "return of service." This is a statement under oath explaining when service was made and how. This statement can be made on the back side of the summons.

An alternative to serving a summons is to ask the defendant to waive service. The procedure for requesting waiver is set out in the Federal Rules of Civil Procedure. Forms for requesting waiver are available from the court.

**WARNING: IF SERVICE IS NOT MADE WITHIN 120 DAYS FROM THE DATE THE COMPLAINT IS FILED, THE CASE MAY BE DISMISSED. YOU MAY REQUEST AN EXTENSION OF THIS PERIOD IF YOU CAN SHOW GOOD CAUSE WHY SERVICE WAS NOT MADE.**

## **What Happens After Service is Made?**

Once a defendant is served, several things may happen: the defendant may file an answer; the defendant may file a motion; or the defendant may do nothing. Note: if there is more than one defendant a combination of these things may happen.

If the defendant files an answer, the judge assigned to the case will issue a scheduling order. A scheduling order sets deadlines for doing or filing certain things in a particular case. It may include deadlines for completing discovery, filing motions, and/or filing status reports. The scheduling order may also set a trial date.

There are a number of different motions which may be filed before an answer is filed. If the motion is routine request for an extension of time in which to answer, it will most likely be granted unless you file a timely response in opposition to the motion and have a good reason as to why it should not be granted. Your responses to motions must be filed within the time set by the court's rules. See Local Rule 5.2 . You are responsible for determining when your response must be filed. The Clerk's Office cannot tell you when your response must be filed.

## **Discovery**

A scheduling order may contain a deadline for the completion of discovery. Discovery is the process of obtaining information and evidence relevant to your case. NOTE: THERE ARE SOME TYPES OF CASES ( SOCIAL SECURITY APPEALS, FOR EXAMPLE) IN WHICH DISCOVERY DOES NOT OCCUR. Discovery is governed by the Federal Rules of Civil Procedure, Rules 26 through 37, and Local Rule numbers 33.1 Interrogatories and 37.2 Form of Discovery Motions.

It is important for you to respond to any discovery requests. A party who does not respond to a discovery request may be subject to sanctions, including dismissal of the case. Do not send copies of discovery requests or answers to the court unless directed by

the court to do so. Send a copy of the request to the party you are seeking discovery information from and keep the original. When you provide responses to a party seeking discovery, send him or her the original and keep a copy for your records.

## **Counsel**

You are not entitled to have an attorney appointed to represent you in a civil action. A judge has the authority to appoint an attorney but only in exceptional circumstances. If you want a judge to consider

appointing an attorney to represent you, you may file a motion for appointment of counsel. In the motion, you should explain why you think you need an attorney and any efforts you have made to obtain one.

If you can afford to hire an attorney but haven't been able to locate one, many local bar associations have lawyer referral services. Some services offer consultations with attorneys at reduced rates.

### **Things to Know About Representing Yourself**

Once your complaint is assigned a case number, everything you receive from the court about your case will have the case number on it. Everything you send to the court other than the complaint and application for permission to proceed *in forma pauperis* should have the case number on it. On pleadings, motions, and papers other than the complaint, you may use a shortened version of the case caption. The shortened version includes the name of the first plaintiff, the case number, and the name of the first defendant.

The court has four locations -- Chattanooga, Greeneville, Knoxville, and Winchester. Unless directed otherwise, all communications to the court about your case should be addressed to the Clerk of the Court in the division where your case has been assigned. The addresses are:

Clerk of the Court  
States District Court  
Division

900 Georgia Avenue  
Chattanooga, TN 37401

Clerk of the Court  
United States District Court  
Knoxville Division

800 Market Street

Suite 130  
Knoxville, TN 37902

United  
Chattanooga  
P.O. Box 591

Clerk of the Court  
United States District Court  
Greeneville Division  
Federal Building, Room 212  
101 Summer Street West  
Greeneville, TN 37743

Clerk of the Court  
United States District Court  
Winchester Division  
P.O. Box 459  
2<sup>nd</sup> Floor, Federal Building  
South Jefferson Street  
Winchester, TN 37398

**YOU MUST NOTIFY THE COURT AND ALL PARTIES, IN WRITING, OF ANY CHANGE**

IN YOUR ADDRESS. FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE.

After you file the complaint no communication about your case should be sent directly to any judge. If you want to ask the court to order something, you must file a motion. Pleadings and motions should be filed with the clerk and a copy must be mailed to the attorney representing the defendant(s) or directly to the defendant(s) if he or she does not have an attorney. You must include a certificate of service, that is, a statement by you that you have served the other party, on anything you file after your complaint showing when you mailed copies and to whom they were sent. The certificate of service appears at the end of the pleading or motion and looks like the sample attached as the last page of these instructions. It is not necessary to state in the certificate of service that copies were sent to the court or to the clerk.

Do not file any motions or memorandums longer than 25 pages unless you have received permission from the court. Most motions and memorandums should be much shorter than 25 pages.

You must sign every pleading, motion, and memorandum that you file. If more than one party is representing himself or herself in a particular case, each one must sign each pleading, motion, or other paper submitted on behalf of that party.

Persons representing themselves who need to serve subpoenas in their case must obtain from the Clerk's Office subpoena forms that have been signed by the clerk.

## **If You Lose**

BEFORE filing suit you should consider the consequences of losing. Under limited circumstances, the winning party may ask that you be ordered to pay his or her attorney's fees. The winning party also is entitled to seek certain costs which it incurs during a lawsuit. These costs can include things such as deposition transcripts, witness fees, copy work expenses, etc. In many cases they can easily add up to thousands of dollars. It is common for a winning party to seek these costs from the losing party.

## **Appeals**

You may appeal a final decision of this court to the United States Court of Appeals for the Sixth Circuit. You should consult the Federal Rules of Civil Procedure for the time limits for filing an appeal.

The filing fee for an appeal is \$105. If you cannot afford to pay the fee, you may file an application for permission to proceed *in forma pauperis* on appeal.

To file an appeal, you must file with the clerk of **this** court a notice of appeal. A blank form for use in filing a notice of appeal is available from the clerk. You also must submit to the clerk of this court either the filing fee or an application for permission to proceed *in forma pauperis*.

## Resources

The forms referred to in this pamphlet can be obtained from the Clerk's Office. The Clerk's Office is open Monday through Friday from 8:00 a.m. to 4:00 p.m.. It is closed on federal holidays. Many of the forms can be downloaded from the court's Web site: **[www.tned.uscourts.gov](http://www.tned.uscourts.gov)**. The Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Eastern District of Tennessee also are available on the court's Web site or can be reviewed at the public counters.

Additional information about the Eastern District of Tennessee can be found at:  
**<http://www.tned.uscourts.gov>**.

## Sample "Certificate of Service"

I hereby certify that a true and correct copy of the foregoing pleading was served on the following persons:

(Here you should list the attorneys or parties and their addresses to whom you sent a copy of the pleading.)

Example:

1. Mr. John Smith  
Attorney  
Street Address or Post Office Box  
City, State

2. Ms. Ann Jones  
Street Address or Post Office Box  
City, State

by depositing same in the United States mail this \_\_\_\_\_ day of June 2001.

James Jones, Pro Se Plaintiff  
Street Address  
City, State  
Telephone number

This \_\_\_\_\_ day of June 2001.